



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1130]

Certain Beverage Dispensing Systems and Components Thereof; Commission Decision Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, in this investigation and has issued a limited exclusion order and a cease and desist order prohibiting importation of infringing beverage dispensing systems and components thereof.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-2532. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired

persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 5, 2018, based on a complaint filed by Heineken International B.V. and Heineken Supply Chain B.V., both of Amsterdam, The Netherlands; and Heineken USA Inc. of White Plains, New York (collectively, “Heineken”). 83 FR 45141, 45141-42 (Sept. 5, 2019). The complaint alleges a violation section 337 of the Tariff Act 1930, as amended, 19 U.S.C. 1337 (“section 337”) in the importation into the United States, sale for importation, or sale in the United States after importation of certain beverage dispensing systems and components thereof that allegedly infringe claims 1-11 of the ’751 patent. *Id.* The notice of investigation names as respondents Anheuser-Busch InBev SA, and InBev Belgium NV, both of Leuven, Belgium; and Anheuser-Busch, LLC of St. Louis, Missouri (collectively, “ABI”). *Id.* The Office of Unfair Import Investigations was not named as a party to this investigation. *Id.*

On February 6, 2019, the presiding administrative law judge (“ALJ”) granted Heineken’s motion to partially terminate the investigation as to claims 2, 4-6, 8-9, and 11 of the ’751 patent. Order No. 6 (Feb. 6, 2019), *not reviewed*, Notice (Mar. 7, 2019). Remaining within the investigation are claims 1, 3, 7, and 10 of the ’751 patent. On March 26, 2019, the ALJ issued Order No. 14, the *Markman* Order, construing certain claim terms. The ALJ conducted the evidentiary hearing from April 16-18 and 23, 2019.

On September 5, 2019, the ALJ issued a final initial determination (“ID”), finding claims 1, 3, 7, and 10 infringed and not invalid, and thereby finding a violation of section 337 with respect to those claims. On September 19, 2019, the ALJ issued a

Recommended Determination on Remedy and Bond (“RD”). The RD recommends that should the Commission find a violation of section 337, that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond rate during the period of Presidential review in the amount of five percent of the entered value of infringing articles.

On September 18, 2019, ABI filed a petition for Commission review of aspects of the ID. That same day, Heineken filed a contingent petition for review. On September 26, 2019, the parties responded to each other’s petitions.

On November 4, 2019, the Commission determined to review the ID in its entirety. Notice at 2 (Nov. 4, 2019) (“Notice of Review”), *published at* 84 Fed. Reg. 60452 (Nov. 8, 2019). The Commission solicited briefing on remedy, the public interest, and bonding, as well on specific issues concerning claim construction, infringement, invalidity, and the domestic industry requirement.

On November 18, 2019, the parties filed opening briefs in response to the Notice of Review. On November 26, 2019, the parties filed replies to each other’s brief.

Having reviewed the record of the investigation, including the *Markman* Order, the final ID, and the parties’ submissions to the ALJ and to the Commission, the Commission has found a violation of section 337. Specifically, the Commission finds that Heineken has demonstrated the existence of a domestic industry and that asserted claims 1, 3, 7, and 10 of the ’751 patent are infringed and are not invalid.

The Commission has further determined that the appropriate remedy is: (1) a limited exclusion order prohibiting the entry of infringing beverage dispensing systems and components thereof; and (2) a cease and desist order directed to respondent

Anheuser-Busch LLC. The Commission has determined that the public interest factors enumerated in section 337(d) and (f), 19 U.S.C. § 1337(d), (f), do not preclude the issuance of the limited exclusion order or the cease and desist order. The Commission has determined that a bond in the amount of five (5) percent of the entered value of the imported beverage containers is required during the period of Presidential review. 19 U.S.C. 1337(j)(3). Notwithstanding the foregoing, the exclusion order and the cease and desist order permit ABI to import beverage containers that are used as part of ABI's PureDraught system.

The investigation is terminated. The Commission's reasoning in support of its determinations is set forth more fully in its opinion. The Commission's orders and opinion were delivered to the President and the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 11, 2020.

Lisa Barton,

Secretary to the Commission.